

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SOCORRO HURTADO-GARCIA,

Defendant-Appellant.

UNPUBLISHED

April 24, 2012

No. 304490

Kent Circuit Court

LC No. 10-002057-FC

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to consecutive sentences of life imprisonment without the possibility of parole for the first-degree murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

A first-degree murder conviction requires the prosecution to “prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.” *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992) (citation omitted). There is no dispute that defendant intentionally shot his former employer in the chest, killing him, during a confrontation in defendant’s apartment. Defendant argues only that the killing was not premeditated. We review a claim of insufficient evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We view the evidence in the light most favorable to the prosecution to determine whether it was sufficient to allow a rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

“Some time span between initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation,” *People v Hoffmeister*, 394 Mich 155, 161; 229 NW2d 305 (1975). “[T]he interval between initial thought and ultimate action should be long enough to afford a reasonable man time to subject the nature of his response to a ‘second look.’” *People v Morrin*, 31 Mich App 301, 330; 187 NW2d 434 (1971) (citations omitted). “Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation.” *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998) (citation omitted). Factors that are considered in determining whether premeditation has been established include: “(1) the previous relationship

between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted." *Id.* at 300-301. While by no means a firm rule, "the homicide occur[ing] during an affray whose nature would not permit cool and orderly reflection" is often incompatible with a finding of premeditation. *Morrin*, 31 Mich App at 331.

We find that ample evidence supported the jury's finding that defendant acted with premeditation and deliberation. Defendant told police that he had been having problems with the victim for about a year prior to the shooting because defendant believed that the victim was unjustifiably trying to force defendant out of his job. After the victim fired defendant, less than two months before the shooting, defendant was initially pleased but became increasingly angry thereafter. Defendant believed that the victim was going to kick defendant out of the migrant housing on the victim's farm, for which defendant was behind in his payments. Defendant consequently had a motive to kill the victim, which supports an inference of premeditation and deliberation. See *People v Youngblood*, 165 Mich App 381, 387; 418 NW2d 472 (1988).

It is also clear from the evidence that defendant planned the killing. Defendant purchased the gun he used to shoot the victim approximately two months before the shooting. While this predates defendant's firing, defendant normally did not carry the gun but did make sure to put it in his pocket shortly before the time when the victim regularly visited the apartment. Defendant indicated to others a week or two before the killing that he was going to "fuck [the victim] up." Defendant indicated to the police that he had been planning a confrontation with the victim for about a week that would culminate in the victim being shot if he did not give defendant a job back. Defendant told friends before the shooting that if the victim did not change his mind and rehire defendant, there would be problems. "Prior planning denotes premeditation and deliberation." *People v Hamp*, 110 Mich App 92, 103; 312 NW2d 175 (1981).

The circumstances of the killing itself further reveal evidence of premeditation. The victim was seated at a table, was calm, and appeared to be relaxed. He did not assault or attack defendant in any way, and a witness testified that defendant's demeanor was normal before the shooting. Defendant admitted that the victim was not angry, and told police that when he pointed the gun at the victim, the victim thought defendant was playing. A rational jury could reasonably infer that defendant was in control of the situation and had ample time to reflect on his actions. See *People v Tilley*, 405 Mich 38, 45-46; 273 NW2d 471 (1979). See also *Morrin*, 31 Mich App at 330-331, 331 n 47. Cf. *Plummer*, 229 Mich App 293, 302.

Additionally, evidence of defendant's lack of remorse after the killing was compelling evidence of premeditation. A defendant's lack of remorse after a killing may be relevant to determining whether there was premeditation and deliberation. *People v Paquette*, 214 Mich App 336, 342-343; 543 NW2d 342 (1995). After the shooting, defendant threatened to shoot the victim again, asking the victim if he "wanted another." Witnesses described defendant's demeanor after the killing as calm, and stated that defendant was not excited or upset. In his interview with the police after the killing, defendant told officers that he did not regret killing the victim, stating that the victim deserved to repent for what he had done to people. Defendant admitted that he wanted the victim dead because he believed that the victim had destroyed his life.

In sum, viewing the evidence in a light most favorable to the prosecution, sufficient evidence supported the jury's finding that the killing was premeditated. Defendant essentially urges us to view the evidence in the light most favorable to himself, which is not the proper standard of review. *Hunter*, 466 Mich at 6.

Finally, defendant argues that he received ineffective assistance of counsel because trial counsel did not put more effort into presenting a defense that defendant committed, at the most, second-degree murder. Defendant seemingly argues that counsel was ineffective because counsel did not explicitly ask the jury, in so many words and during closing argument, to return a verdict of second-degree murder instead of first-degree murder. We find this argument baffling, given that defendant's entire defense from the outset was that he did commit the killing but did not have the requisite intent to make that killing murder in the first degree. The jury was instructed as to the elements of both first-degree and second-degree murder and was clearly aware of the significance of defendant's no-premeditation defense. Whether or not trial counsel should have placed greater emphasis on defendant and the victim having a heated discussion immediately prior to the shooting is impossible for us to evaluate, even with the benefit of hindsight. We do not find that defendant received ineffective assistance of counsel.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause